

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LEONARDO MORALES,

Plaintiff,

-against-

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

MEMORANDUM AND ORDER

Case No. 1:18-cv-06906-FB

Appearances:

For the Plaintiff:

EDDY PIERRE PIERRE, ESQ.
Pierre Pierre Law, P.C.
211 East 43rd Street, Suite 608
New York, NY 10017

For the Defendant:

JACQUELYN KASULIS, ESQ.
Acting United States Attorney
Eastern District of New York
By: ARTHUR SWERDLOFF, ESQ.
Assistant United States Attorney
271 Cadman Plaza East, 7th Floor
Brooklyn, New York 11201

BLOCK, Senior District Judge:

In a decision issued on September 25, 2020, this Court granted Leonardo Morales' motion for judgment on the pleadings and ordered remand for the calculation of benefits. *See* ECF No. 25. Pending is attorney Eddy Pierre Pierre's motion for approval of a contingency fee agreement ("the Agreement"), which requests that 25% of the plaintiff's past due benefits award be paid to counsel. For the following reasons, the plaintiff's motion is granted in part.

I.

Title 42, United States Code, Section 406(b) entitles prevailing plaintiffs in Social Security actions to “reasonable [attorney’s] fee[s] [that are] not in excess of 25 percent of the total past-due benefits to which the plaintiff is entitled.” The Supreme Court has held that 42 U.S.C. § 406(b)’s “reasonable fee” provision does not prohibit the use of contingency fee agreements, so long as they do not provide for a fee “in excess of 25 percent of the total past due benefits” and are “reasonable.” *See Gisbrecht v. Barnhart*, 535 U.S. 789, 808-09 (2002). Courts in the Second Circuit weigh three factors when assessing the reasonableness of a fee agreement: (1) whether the proposed fee is below the 25% statutory maximum; (2) whether the contingency fee agreement is the product of fraud or attorney overreach; and (3) whether the requested amount is so large as to be a windfall to the attorney. *Wells v. Sullivan*, 907 F.2d 367, 372 (2d Cir. 1990).

Here, Pierre Pierre requests a fee of \$35,829.25 for 39.53 attorney hours. This would produce an hourly rate of \$906.38. As the Court sees no issues relating to the first or second factors, the critical question is whether the requested amount constitutes a windfall. The Court believes that it would.

The circumstances of this case are analogous to other cases in which Pierre Pierre has received a reduced fee, reflecting an effective hourly rate of \$500, after achieving a favorable result for a Social Security claimant. *See, e.g., Arroyo v.*

Comm'r of Soc. Sec., No. 14-CV-3513 (PKC), 2018 WL 2088013, at *3 (E.D.N.Y. May 4, 2018) (request for \$14,000 for 19.7 hours of work by Pierre Pierre and his colleague Binder; award of \$9,850); *Colon v. Berryhill*, No. 1:15-CV-06314 (PKC), 2018 WL 1730335, at *3 (E.D.N.Y. April 9, 2018) (request for \$12,077 for 21.8 hours of work by Pierre Pierre and his colleague Binder; award of \$10,900); A similar approach is appropriate in this case in order to:

adequately compensate [counsel] for the time that they spent on this case, the risks that they accepted in [representing plaintiff] on a contingency basis, and the successful result they obtained for [him, while also] satisfy[ing] the underlying policy goal of ensuring that claimants have qualified counsel representing them in their social security appeals[.]

Colon, 2018 WL 1730335, at *3 (internal citation omitted). Accounting for inflation, the Court believes an award of \$21,741.50 will reasonably compensate counsel at an hourly rate of \$550.

The Court cannot deduct the \$7,902.12 EAJA award from its final award, since the statute requires that “the claimant’s attorney … refund to the claimant the amount of the smaller fee.” *Gisbrecht*, 535 U.S. at 789. Accordingly, Pierre Pierre shall refund the \$7,902.12 he received under the EAJA.

CONCLUSION

The plaintiff’s motion for attorney’s fees is **GRANTED IN PART**. The Commissioner of the SSA is **ORDERED** to disburse \$21,741.50 to Pierre Pierre

and the remainder to the plaintiff. Upon receipt of these funds, Pierre Pierre is
ORDERED to refund the \$7,902.12 awarded under the EAJA to the plaintiff.

SO ORDERED.

/S/ Frederic Block
FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
August 4, 2020